

Introduced by Senator Florez

February 20, 2003

An act to amend Sections 6006, 6011, 6012, 6014, 6051, 6051.2, 6051.3, 6066, 6071, and 6072 of, and to add Sections 6015.5 and 6019.1 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 400, as introduced, Florez. Sales and use taxes.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property.

This bill would impose a tax on the gross receipts derived from a specialized service, as defined, furnished or provided within this state.

By imposing a new tax, this bill would result in a change in state taxes for the purpose of increasing revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6006 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 6006. "Sale" means and includes:



1 (a) Any transfer of title or possession, exchange, or barter,
2 conditional or otherwise, in any manner or by any means
3 whatsoever, of tangible personal property for a consideration.
4 “Transfer of possession” includes only transactions found by the
5 board to be in lieu of a transfer of title, exchange, or barter.

6 (b) The producing, fabricating, processing, printing, or
7 imprinting of tangible personal property for a consideration for
8 consumers who furnish either directly or indirectly the materials
9 used in the producing, fabricating, processing, printing, or
10 imprinting.

11 (c) The furnishing and distributing of tangible personal
12 property for a consideration by social clubs and fraternal
13 organizations to their members or others.

14 (d) The furnishing, preparing, or serving for a consideration of
15 food, meals, or drinks.

16 (e) A transaction whereby the possession of property is
17 transferred but the seller retains the title as security for the payment
18 of the price.

19 (f) A transfer for a consideration of the title or possession of
20 tangible personal property which has been produced, fabricated,
21 or printed to the special order of the customer, or of any
22 publication.

23 (g) Any lease of tangible personal property in any manner or by
24 any means whatsoever, for a consideration, except a lease of:

25 (1) Motion pictures or animated motion pictures, including
26 television, films, and tapes.

27 (2) Linen supplies and similar articles when an essential part of
28 the lease agreement is the furnishing of the recurring service of
29 laundering or cleaning the articles.

30 (3) Household furnishings with a lease of the living quarters in
31 which they are to be used.

32 (4) Mobile transportation equipment for use in transportation
33 of persons or property as defined in Section 6023.

34 (5) Tangible personal property leased in substantially the same
35 form as acquired by the lessor or leased in substantially the same
36 form as acquired by a transferor, as to which the lessor or transferor
37 has paid sales tax reimbursement or has paid use tax measured by
38 the purchase price of the property. For purposes of this paragraph,
39 “transferor” shall mean the following:



1 (A) A person from whom the lessor acquired the property in a
2 transaction described in subdivision (b) of Section 6006.5.

3 (B) A decedent from whom the lessor acquired the property by
4 will or the laws of succession.

5 (6) A mobilehome, as defined in Sections 18008 and 18211 of
6 the Health and Safety Code, other than a mobilehome originally
7 sold new prior to July 1, 1980, and not subject to local property
8 taxation.

9 (7) Paragraphs (1) and (5) and Section 6094.1 shall not apply
10 to rentals or leases of video cassettes, video tapes, and video discs
11 for private use under which the lessee or renter does not obtain or
12 acquire the right to license, broadcast, exhibit, or reproduce the
13 video cassette, video tape, or video disc.

14 *(h) The furnishing or provision of a specialized service for*
15 *consideration, either separately or as part of a retail sale, unless*
16 *otherwise excluded by this part.*

17 SEC. 2. Section 6011 of the Revenue and Taxation Code is
18 amended to read:

19 6011. (a) "Sales price" means the total amount for which
20 tangible personal property is sold or leased or rented, *or the total*
21 *amount for which a specialized service is provided*, as the case may
22 be, valued in money, whether paid in money or otherwise, without
23 any deduction on account of any of the following:

24 (1) The cost of the property sold.

25 (2) The cost of materials used, labor or service cost, interest
26 charged, losses, or any other expenses.

27 (3) The cost of transportation of the property, except as
28 excluded by other provisions of this section.

29 (b) The total amount for which the property is sold or leased or
30 rented, *or for which a specialized service is provided*, includes all
31 of the following:

32 (1) Any services that are a part of ~~the~~ a sale.

33 (2) Any amount for which credit is given to the purchaser by
34 the seller.

35 (3) The amount of any tax imposed by the United States upon
36 producers and importers of gasoline and the amount of any tax
37 imposed pursuant to Part 2 (commencing with Section 7301) of
38 this division.

39 (c) "Sales price" does not include any of the following:

1 (1) Cash discounts allowed and taken on sales *or for the*
2 *provision of a specialized service.*

3 (2) The amount charged for property returned by customers
4 when that entire amount is refunded either in cash or credit, but this
5 exclusion shall not apply in any instance when the customer, in
6 order to obtain the refund, is required to purchase other property
7 *or a specialized service* at a price greater than the amount charged
8 for the property that is returned *or the specialized service for which*
9 *a credit is received.* For the purpose of this section, refund or credit
10 of the entire amount shall be deemed to be given when the purchase
11 price less rehandling and restocking costs, *if applicable*, are
12 refunded or credited to the customer. The amount withheld for
13 rehandling and restocking costs may be a percentage of the sales
14 price determined by the average cost of rehandling and restocking
15 returned merchandise during the previous accounting cycle.

16 ~~(3) The amount charged for labor or services rendered in~~
17 ~~installing or applying the property sold.~~

18 ~~(4)~~—(A) The amount of any tax (not including, however, any
19 manufacturers' or importers' excise tax, except as provided in
20 subparagraph (B)) imposed by the United States upon or with
21 respect to retail sales whether imposed upon the retailer or the
22 consumer.

23 (B) The amount of manufacturers' or importers' excise tax
24 imposed pursuant to Section 4081 or 4091 of the Internal Revenue
25 Code for which the purchaser certifies that he or she is entitled to
26 either a direct refund or credit against his or her income tax for the
27 federal excise tax paid or for which the purchaser issues a
28 certificate pursuant to Section 6245.5.

29 ~~(5)~~—

30 (4) The amount of any tax imposed by any city, county, city and
31 county, or rapid transit district within the State of California upon
32 or with respect to retail sales of tangible personal property,
33 measured by a stated percentage of sales price or gross receipts,
34 whether imposed upon the retailer or the consumer.

35 ~~(6)~~—

36 (5) The amount of any tax imposed by any city, county, city and
37 county, or rapid transit district within the State of California with
38 respect to the storage, use or other consumption in that city, county,
39 city and county, or rapid transit district of tangible personal



1 property measured by a stated percentage of sales price or purchase
2 price, whether the tax is imposed upon the retailer or the consumer.

3 ~~(7)–~~

4 (6) Separately stated charges for transportation from the
5 retailer's place of business or other point from which shipment is
6 made directly to the purchaser, but the exclusion shall not exceed
7 a reasonable charge for transportation by facilities of the retailer
8 or the cost to the retailer of transportation by other than facilities
9 of the retailer. However, if the transportation is by facilities of the
10 retailer, or the property is sold for a delivered price, this exclusion
11 shall be applicable solely with respect to transportation which
12 occurs after the purchase of the property is made.

13 ~~(8)–~~

14 (7) Charges for transporting landfill from an excavation site to
15 a site specified by the purchaser, either if the charge is separately
16 stated and does not exceed a reasonable charge or if the entire
17 consideration consists of payment for transportation.

18 ~~(9)–~~

19 (8) The amount of any motor vehicle, mobilehome, or
20 commercial coach fee or tax imposed by and paid the State of
21 California that has been added to or is measured by a stated
22 percentage of the sales or purchase price of a motor vehicle,
23 mobilehome, or commercial coach.

24 ~~(10)–~~

25 (9) (A) The amount charged for intangible personal property
26 transferred with tangible personal property in any technology
27 transfer agreement, if the technology transfer agreement
28 separately states a reasonable price for the tangible personal
29 property.

30 (B) If the technology transfer agreement does not separately
31 state a price for the tangible personal property, and the tangible
32 personal property or like tangible personal property has been
33 previously sold or leased, or offered for sale or lease, to third
34 parties at a separate price, the price at which the tangible personal
35 property was sold, leased, or offered to third parties shall be used
36 to establish the retail fair market value of the tangible personal
37 property subject to tax. The remaining amount charged under the
38 technology transfer agreement is for the intangible personal
39 property transferred.

(C) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has not been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the retail fair market value shall be equal to 200 percent of the cost of materials and labor used to produce the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(D) For purposes of this paragraph, “technology transfer agreement” means any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest.

~~(H)~~

~~(I)~~ (I) The amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

~~(J)~~

(II) (A) The amount of tax imposed by any Indian tribe within the State of California with respect to a retail sale of tangible personal property measured by a stated percentage of the sales or purchase price, whether the tax is imposed upon the retailer or the consumer.

(B) The exclusion authorized by subparagraph (A) shall only apply to those retailers who are in substantial compliance with this part.

SEC. 3. Section 6012 of the Revenue and Taxation Code is amended to read:

6012. (a) “Gross receipts” mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, *or the provision of a specialized service by a service provider*, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold. However, in accordance with any rules and regulations as the board may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making

any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If that deduction is taken by the retailer, no refund or credit will be allowed to his or her vendor with respect to the sale of the property.

(2) The cost of the materials used, labor or service cost, interest paid, losses, or any other expense.

(3) The cost of transportation of the property, except as excluded by other provisions of this section.

(4) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

(b) The total amount of the sale~~or~~, lease~~or~~, rental, *or service* price includes all of the following:

(1) Any services that are a part of ~~the~~ *a* sale.

(2) All receipts, cash, credits and property of any kind.

(3) Any amount for which credit is allowed by the seller to the purchaser.

(c) “Gross receipts” do not include any of the following:

(1) Cash discounts allowed and taken on sales *or for the provision of a specialized service*.

(2) Sale price of property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property *or a specialized service* at a price greater than the amount charged for the property that is returned *or the specialized service for which a credit is received*. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs, *if applicable*, are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

~~(3) The price received for labor or services used in installing or applying the property sold.~~

~~(4)~~ (A) The amount of any tax (not including, however, any manufacturers’ or importers’ excise tax, except as provided in subparagraph (B)) imposed by the United States upon or with

1 respect to retail sales whether imposed upon the retailer or the
2 consumer.

3 (B) The amount of manufacturers' or importers' excise tax
4 imposed pursuant to Section 4081 or 4091 of the Internal Revenue
5 Code for which the purchaser certifies that he or she is entitled to
6 either a direct refund or credit against his or her income tax for the
7 federal excise tax paid or for which the purchaser issues a
8 certificate pursuant to Section 6245.5.

9 ~~(5)–~~

10 (4) The amount of any tax imposed by any city, county, city and
11 county, or rapid transit district within the State of California upon
12 or with respect to retail sales of tangible personal property
13 measured by a stated percentage of sales price or gross receipts
14 whether imposed upon the retailer or the consumer.

15 ~~(6)–~~

16 (5) The amount of any tax imposed by any city, county, city and
17 county, or rapid transit district within the State of California with
18 respect to the storage, use or other consumption in that city, county,
19 city and county, or rapid transit district of tangible personal
20 property measured by a stated percentage of sales price or purchase
21 price, whether the tax is imposed upon the retailer or the consumer.

22 ~~(7)–~~

23 (6) Separately stated charges for transportation from the
24 retailer's place of business or other point from which shipment is
25 made directly to the purchaser, but the exclusion shall not exceed
26 a reasonable charge for transportation by facilities of the retailer
27 or the cost to the retailer of transportation by other than facilities
28 of the retailer. However, if the transportation is by facilities of the
29 retailer, or the property is sold for a delivered price, this exclusion
30 shall be applicable solely with respect to transportation which
31 occurs after the sale of the property is made to the purchaser.

32 ~~(8)–~~

33 (7) Charges for transporting landfill from an excavation site to
34 a site specified by the purchaser, either if the charge is separately
35 stated and does not exceed a reasonable charge or if the entire
36 consideration consists of payment for transportation.

37 ~~(9)–~~

38 (8) The amount of any motor vehicle, mobilehome, or
39 commercial coach fee or tax imposed by and paid to the State of
40 California that has been added to or is measured by a stated



percentage of the sales or purchase price of a motor vehicle, mobilehome, or commercial coach.

~~(10)~~

(9) (A) The amount charged for intangible personal property transferred with tangible personal property in any technology transfer agreement, if the technology transfer agreement separately states a reasonable price for the tangible personal property.

(B) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the price at which the tangible personal property was sold, leased, or offered to third parties shall be used to establish the retail fair market value of the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(C) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has not been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the retail fair market value shall be equal to 200 percent of the cost of materials and labor used to produce the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(D) For purposes of this paragraph, “technology transfer agreement” means any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest.

~~(11)~~

(10) The amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

~~(12)~~

(11) (A) The amount of tax imposed by any Indian tribe within the State of California with respect to a retail sale of tangible personal property measured by a stated percentage of the sales or

1 purchase price, whether the tax is imposed upon the retailer or the
2 consumer.

3 (B) The exclusion authorized by subparagraph (A) shall only
4 apply to those retailers who are in substantial compliance with this
5 part.

6 For purposes of the sales tax, if the retailers establish to the
7 satisfaction of the board that the sales tax has been added to the
8 total amount of the sale price and has not been absorbed by them,
9 the total amount of the sale price shall be deemed to be the amount
10 received exclusive of the tax imposed. Section 1656.1 of the Civil
11 Code shall apply in determining whether or not the retailers have
12 absorbed the sales tax.

13 SEC. 4. Section 6014 of the Revenue and Taxation Code is
14 amended to read:

15 6014. (a) “Seller” includes every person engaged in the
16 business of selling of:

17 (1) *Selling* tangible personal property of a kind the gross
18 receipts from the retail sale of which are required to be included
19 in the measure of the sales tax.

20 ~~For~~

21 (2) *Providing a specialized service of a kind of which the gross*
22 *receipts are required to be included in the measure of sales tax.*

23 (b) *For the purposes of this section, the section:*

24 (1) *The phrase “tangible personal property of a kind the gross*
25 *receipts from the retail sale of which are required to be included*
26 *in the measure of the sales tax” includes all tangible personal*
27 *property of a kind the gross receipts from the retail sale of which*
28 *is, or would be, required to be included in the measure of the sales*
29 *tax if sold at retail, whether or not the tangible personal property*
30 *is ever sold at retail or is suitable for sale at retail.*

31 (2) *The phrase “provision of a specialized service for which*
32 *consideration is received” includes ____.*

33 SEC. 5. Section 6015.5 is added to the Revenue and Taxation
34 Code, to read:

35 6015.5. “Provider of a specialized service” includes:

36 SEC. 6. Section 6019.1 is added to the Revenue and Taxation
37 Code, to read:

38 6019.1. “Specialized services” includes:

39 SEC. 7. Section 6051 of the Revenue and Taxation Code is
40 amended to read:

1 6051. For the privilege of selling tangible personal property
2 at retail *or providing a specialized service*, a tax, *as set forth below*,
3 is hereby imposed upon all retailers at the rate of $2\frac{1}{2}$ percent of
4 the gross receipts of any retailer from the sale of all tangible
5 personal property sold at retail in this state on or after August 1,
6 1933, and to and including June 30, 1935, and at the rate of 3
7 percent thereafter, and at the rate of $2\frac{1}{2}$ percent on and after July
8 1, 1943, and to and including June 30, 1949, and at the rate of 3
9 percent on and after July 1, 1949, and to and including July 31,
10 1967, and at the rate of 4 percent on and after August 1, 1967, and
11 to and including June 30, 1972, and at the rate of $3\frac{3}{4}$ percent on
12 and after July 1, 1972, and to and including June 30, 1973, and at
13 the rate of $4\frac{3}{4}$ percent on and after July 1, 1973, and to and
14 including September 30, 1973, and at the rate of $3\frac{3}{4}$ percent on
15 and after October 1, 1973, and to and including March 31, 1974,
16 and at the rate of $4\frac{3}{4}$ percent ~~thereafter~~ *to and including _____, and*
17 *at that same rate thereafter upon both the gross receipts of any*
18 *retailer from the sale of all tangible personal property sold in this*
19 *state, and the gross receipts of any provider of a specialized service*
20 *from the provision of specialized services in this state.*

21 SEC. 8. Section 6051.2 of the Revenue and Taxation Code is
22 amended to read:

23 6051.2. (a) In addition to the taxes imposed by Section 6051
24 and any other provision of this part, for the privilege of selling
25 tangible personal property at retail *or providing a specialized*
26 *service*, a tax is hereby imposed upon all retailers at the rate of $\frac{1}{2}$
27 percent of the gross receipts of any retailer from the sale of all
28 tangible personal property sold at retail in this state on and after
29 July 15, 1991, *to and including _____, and at that same rate*
30 *thereafter upon both the gross receipts of any retailer from the sale*
31 *of all tangible personal property sold in this state, and the gross*
32 *receipts of any provider of a specialized service from the provision*
33 *of specialized services in this state.*

34 (b) All revenues received pursuant to this section shall be
35 deposited in the State Treasury to the credit of the Local Revenue
36 Fund, as established pursuant to Section 17600 of the Welfare and
37 Institutions Code.

38 (c) This section shall cease to be operative on the first day of
39 the first month of the calendar quarter following notification to the
40 board by the Department of Finance of a final judicial

determination by the California Supreme Court or any California court of appeal that the revenues collected pursuant to this section and Section 6201.2 that are deposited in the Local Revenue Fund are either of the following:

(1) “General Fund proceeds of taxes appropriated pursuant to Article XIII B of the California Constitution,” as used in subdivision (b) of Section 8 of Article XVI of the California Constitution.

(2) “Allocated local proceeds of taxes,” as used in subdivision (b) of Section 8 of Article XVI of the California Constitution.

SEC. 9. Section 6051.3 of the Revenue and Taxation Code is amended to read:

6051.3. In addition to the taxes imposed by Sections 6051, 6051.2, 6051.5, and any other provision of this part, for the privilege of selling tangible personal property at retail *or providing a specialized service*, a tax is hereby imposed upon all retailers at the rate of $\frac{1}{4}$ percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this state on and after July 15, 1991, ~~and to and including _____, and at that same rate thereafter upon both the gross receipts of any retailer from the sale of all tangible personal property sold in this state, and the gross receipts of any provider of a specialized service provider in this state~~ during any period in which this section is operative pursuant to Section 6051.4.

SEC. 10. Section 6066 of the Revenue and Taxation Code is amended to read:

6066. (a) Every person desiring to engage in or conduct business as a seller *or a provider of a specialized service* within this state shall file with the board an application for a permit for each place of business. Every application for a permit shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the board may require. An application for a permit shall be authenticated in a form or pursuant to methods as may be prescribed by the board. The application shall state that the applicant will actively engage in or conduct business as a seller of tangible personal property.

(b) An application filed pursuant to this section may be filed using electronic media as prescribed by the board.



1 (c) Electronic media includes, but is not limited to, computer
2 modem, magnetic media, optical disk, facsimile machine, or
3 telephone.

4 SEC. 11. Section 6071 of the Revenue and Taxation Code is
5 amended to read:

6 6071. A person who engages in business as a seller *or as a*
7 *provider of a specialized service* in this state without a permit or
8 permits or after a permit has been suspended or revoked, and each
9 officer of any corporation which so engages in business, is guilty
10 of a misdemeanor punishable as provided in Section 7153.

11 SEC. 12. Section 6072 of the Revenue and Taxation Code is
12 amended to read:

13 6072. A permit shall be held only by persons actively
14 engaging in or conducting a business as a seller of tangible
15 personal property *or as a provider of a specialized service*. Any
16 person not so engaged shall forthwith surrender his or her permit
17 to the board for cancellation. The board may revoke the permit of
18 a person found to be not actively engaged in or conducting a
19 business as a seller of tangible personal property *or as a provider*
20 *of a specialized service*.

21 Any person who knowingly issues a resale certificate while the
22 person is not actively engaged in business as a seller *or as a*
23 *provider of a specialized service*, for personal gain or to evade the
24 payment of taxes, shall be liable for the taxes that would otherwise
25 have been due on the transaction, plus a penalty of 10 percent or
26 five hundred dollars (\$500), whichever is greater, in addition to all
27 other penalties imposed by this part, and interest at the modified
28 adjusted rate per month, or fraction thereof, established pursuant
29 to Section 6591.5, from the last day of the month following the
30 quarterly period for which the amount or any portion thereof
31 should have been returned until the date of payment.

32 SEC. 13. This act provides for a tax levy within the meaning
33 of Article IV of the Constitution and shall go into immediate
34 effect. However, the provisions of this act shall become operative
35 on the first day of the first calendar quarter commencing more than
36 90 days after the effective date of this act.

1		_____
2	CORRECTIONS	
3	Text — Pages 10,11.	
4		_____
5		

